SUPREME COURT, U. S.

AUG 11 1969

JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

October Term, 1969

No. 454

DANTE MARTIRE, *Petitioner,*

vs.

LABORERS' LOCAL UNION 1058, a labor organization, THOMAS J. PECORA, President and Business Manager and LOUIS ELISE, Secretary-Treasurer, as officers of Local Union 1058,

and

LABORERS' DISTRICT COUNCIL OF WESTERN PENNSYLVANIA.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT AND APPENDIX

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and

LABORERS' DISTRICT COUNCIL OF WESTERN PENNSYLVANIA.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

Petitioner prays that a Writ of Certiorari issue to review the opinion and judgment of the United States Court of Appeals for the Third Circuit, filed in the subject case on April 17, 1969.

Opinions Below

The Opinion of the District Court for the Western District of Pennsylvania is attached hereto as Appendix "A".

The Opinion of the Third Circuit Court of Appeals is reported at *Martire vs. Laborers' Local Union 1058*, 410 F. 2d 32 (1969).

Jurisdiction

The judgment of the Court of Appeals for the Third Circuit was entered on April 17, 1969.

Upon Motion, the Supreme Court of the United States, Justice William J. Brennan, Jr., granted an extension of time to August 15, 1969 for the filing of the subject Petition for Writ of Certiorari.

Jurisdiction of this Court is invoked by virtue of 28 U. S. C. Sections 1254 (1) and 2101.

Questions Presented

1. Does a District Council, an intermediate labor organization between the International Union and a Local Union, have the authority or power to remove a Local Union officer from his elected office?

2. Did the District Council violate the Local Union officer's membership rights protected by the Labor-Management Reporting and Disclosure Act of 1959 (73 Stat. 519, 29 U. S. C. A. § 401, *et seq.*) by (a) suspending him from his office in the Local Union prior to the expiration of his three-year elected term; (b) barring him from holding office in the Local Union for five years; and (c) imposing a fine of Five Hundred and no/100 ($500.00) Dollars upon him?

Was the Local Union member-officer denied the statutory safeguards against improper disciplinary action provided for in Section 101 (a) (5) of the L. M. R. D. Act of 1959 [29 U. S. C. A. § 411 (a) (5)] when he was not afforded a

full and fair hearing by members of his Local Union pursuant to the requirements of the Local Union Constitution and By-Laws?

Statutes Involved

Section 101 (a) (5 of L. M. R. D. Act of 1959, 73 Stat. 523, 29 U. S. C. A. § 411 (a) (5).

Section 609, 73 Stat. 541, 29 U. S. C. A. § 529, L. M. R. D. Act of 1959.

Section 401 (h), 73 Stat. 533, 29 U. S. C. A. § 481 (h), L. M. R. D. Act of 1959.

Statement

Petitioner, Dante Martire, a member in good standing of Laborers' Local Union 1058 since 1938, was elected to the office of business manager by members of his Local Union for a three-year term which expired on June 1, 1968.

On September 26, 1967, petitioner was removed and suspended from his office as business manager of Local 1058, prohibited from holding any office in his Local for five years and fined Five Hundred and no/100 ($500.00) Dollars. This disciplinary action was taken by the District Council, not by members of his Local Union, upon charges filed by three delegates to the District Council. At the time of the District Council's action, the Local Union was not placed in Trusteeship.

The Local Union Constitution and By-Laws were bypassed and petitioner was charged and tried by the District Council, a parent body.

Petitioner, having exhausted his internal union appeal procedures, filed a Complaint in the United States District

Court for the Western District of Pennsylvania on February 28, 1968. On March 25, 1968, after a non-jury trial, the District Court ordered and directed that petitioner be reinstated as business manager of Local Union 1058, and be reimbursed for all wages or income, pension, welfare, insurance and other fringe benefits pertinent to his office as business manager of Local Union 1058 from and after September 26, 1967.

The District Court held, *inter alia,* that, "the removal of petitioner as business manager of Local Union 1058 by the officers thereof, without prior proceedings by the Local or a vote of the members," was in violation of 29 U. S. C. A. § 411 (a) (5) citing the Ninth Circuit Court of Appeals decision in *Grand Lodge of I. A. M. vs. John J. King, et al.,* 355 F. 2d 340 (1964) as authority.

On appeal to the Third Circuit of Appeals, the Circuit Court on April 17, 1969 held:

(a) That the Labor-Management Reporting and Disclosure Act of 1959 (L. M. R. D. A.) affords a remedy to an officer of a Local Union who has been disciplined in violation of his membership rights.[1]

(b) That the District Council did have authority to take action against an officer of a Local Union.[2]

(c) That the procedural safeguard requirements of the L. M. R. D. A. were complied with by the District Council's proceeding against the petitioner.[3]

---

[1] The Circuit upheld the District Court on the question of jurisdiction over the subject matter but restricted its reasoning and denied petitioner relief.

[2] The Circuit disagreed with the District Court on this issue.

[3] The Circuit disagreed with the District Court on this issue. The District Court held that the procedural safeguard requirements of 29 U. S. C. A. § 411 (a) (5) were violated by Local Union 1058 when it removed petitioner from his office without a trial by the Local or without a vote of the Local Union members. (District Court opinion, Conclusion of Law No. 5. See Appendix "A".)

The Third Circuit Court of Appeals has decided a very important labor relations issue which is in conflict with other Circuit Courts of Appeal. The issue can be restated as follows: Whether a separate autonomous labor organization (a District Council) is permitted to charge, try and remove from office, elected officers of another separate autonomous labor organization (Local Union 1058), absent the imposition of a Trusteeship in accordance with Title III (29 U. S. C. A. § 461, *et seq.*) of the Labor-Management Reporting and Disclosure Act of 1959? Does this action violate Section 411 (a) (5) of Title 29 U. S. C. A. of the L. M. R. D. Act of 1959 entitled "Safeguards against improper disciplinary action"?

The Third Circuit has, in the subject case, in effect held that a parent body whether it be a District Council or International Union has the authority or power, absent a Trusteeship arrangement, to charge, try and remove Local Union officers from their elected positions.

Notwithstanding, the Local Union Constitution and By-Laws which contain procedures for charges and trial of officers accused of misconduct and notwithstanding the specific statutory procedures set forth in Section 401 (h), 73 Stat. 533 [29 U. S. C. A. § 481 (h)] which provides a remedy for members of a Local Union to remove elected officers guilty of serious misconduct, the Third Circuit has given parent bodies unrestricted power to interfere into and usurp the democratic safeguards of local labor organizations.

Petitioner respectfully submits that Congress sought to curb or restrict the power of parent bodies over local labor organizations when it enacted 29 U. S. C. A. § 461 *Trusteeships* with its safeguards against dictatorial control and in

the passage of Title I, 29 U. S. C. A. § 411, *et seq. Bill of Rights* which protects the rights of members of labor organizations.

Reasons for Granting the Writ

1. The subject decision of the Third Circuit Court of Appeals establishes precedent for the right of a parent body to discipline a Local Union member-officer without a full and fair hearing by that member-officer's Local Union. The Circuit Court states in its opinion:

> *"We therefore conclude that Section 101 (a) (5) was in no way violated by the fact that the charges against Martire were tried before a trial board of the District Council rather than before a body of the Local Union."* [See p. 37 of 410 F. 2d (1969)]

2. The subject decision appears to be in conflict with the Second Circuit Court of Appeals in *Vars vs. Int. Bro. of Boilermakers,* 320 F. 2d 576 (1963) in which the Local Union was placed in *Trusteeship* before the International Union parent body tried Vars on charges of fraud. Vars was a member-officer of a Local Union. Relief was granted under Section 101 (a) (5) of Title I.

3. The subject decision appears to be in conflict with the Second Circuit Court of Appeals decision in *Salzhandler vs. Caputo,* 316 F. 2d 455 (1963) in which a member-officer of a Local Union was afforded protection and relief under 29 U. S. C. A. § 101 (a) (2) and § 609 of L. M. R. D. A.

4. Summary removal from union office of officers suspected of malfeasance by members of the Local Union or by officers of the Local Union is permitted. No violation of Section 101 (a) (5), 29 U. S. C. A. § 411 (a) (5) exists *if* the action is taken *by the Local Union* in accordance with

the Constitution and By-Laws of the Local or, in the absence of such provisions, for removal in accordance with 73 Stat. 533, 29 U. S. C. A. § 481 (h) by members of the Local Union. *Grand Lodge of I. A. M. vs. King,* 335 F. 2d 340 (1964).

It appears that the subject decision is in conflict with the Ninth Circuit Court of Appeals decision in *Grand Lodge of I. A. M. vs. King.*

5. The subject opinion of the Third Circuit seems to be at variance with its earlier opinion in *Sheridan vs. Carpenters,* 306 F. 2d 152, at pages 158-159 (CA3, 1962) in which the Court emphasizes the rights of union members to remove their own officers as being essential to the principle of democratic self-government. The Court stressed the fact that the member-officer was removed from his office as business agent by a *vote of the membership of the Local Union.*

6. The subject decision of the Third Circuit is contrary to the holding of the Second Circuit Court of Appeals in *Navarro vs. Gannon,* 385 F. 2d 512 (1967) which held, *inter alia,* where officers of International Union (a parent body) chose not to establish a Trusteeship according to procedures set forth in the Constitution and Title III of L. M. R. D. A., in the absence of such recourse, autonomy of Local Union should be Court's primary concern (Pages 518-519 of 385 F. 2d). Preservation of Local Union democracy and procedural safeguards against dictatorial control by parent bodies was the chief concern of Congress in the passage of the Labor-Management Reporting and Disclosure Act of 1959.

7. The subject decision of the Third Circuit appears to be contrary to the reasoning of the Fifth Circuit Court

of Appeals in *Allen vs. I. A. T. S. E.*, 338 F. 2d 309 (1964) in which it, *inter alia,* held that a Local Union could not discipline an International Union member-at-large because it had no jurisdiction over said member. The International Union only in accordance with its Constitution and By-Laws could hear the charges against its members-at-large and invoke disciplinary action. See also *Pittman vs. Carpenters,* 251 F. Supp. 323 (D. C. Fla.—1966) and *George vs. Bricklayers Union,* 255 F. Supp. 239 (E. D. Wis.—1966).

All of the above-cited decisions recognize the separation of powers principle to insure implementation of democratic procedures in labor organizations. Petitioner sincerely maintains that the Third Circuit Court of Appeals erred in its conclusion that a parent body (District Council) had the authority to try and discipline him rather than his Local Union.

Therefore, petitioner respectfully requests this Honorable Court to grant his Petition for Writ of Certiorari, in view of the conflicting opinions in the Circuit Courts on this important question.

Respectfully submitted,

J. M. MAURIZI, ESQUIRE,
SUTO, POWER, BALZARINI
& WALSH,
3113 Grant Building,
Pittsburgh, Pennsylvania 15219.

Dated: July 30, 1969.

APPENDIX "A"

Opinion and Order of Court

IN THE
DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

Civil No. 68-259

DANTE MARTIRE,

Plaintiff,

vs.

LABORERS' LOCAL UNION 1058, a labor organization, THOMAS J. PECORA, President and Business Manager and LOUIS ELISE, Secretary-Treasurer, as officers of Local Union 1058,

and

LABORERS' DISTRICT COUNCIL OF WESTERN PENNSYLVANIA,

Defendants.

Argued March 21, 1968.
Before The Honorable Herbert P. Sorg, *District Judge.*

FINDINGS OF FACT

1. Dante Martire is a member of Laborers' Local Union 1058, Pittsburgh, Pennsylvania.

2. One of the incidents of such membership is the right to be a candidate for and hold office or position in the Local Union. [Union Constitution, Article II, Section 2 (c).]

3. The defendants, Laborers' Local Union 1058 and Laborers' District Council of Western Pennsylvania, are labor organizations which maintain their principal offices and places of business within the Western District of Pennsylvania.

4. Defendants, Thomas J. Pecora and Louis Elise are president and secretary-treasurer, respectively, of Laborers' Local Union 1058, residing within the Western District of Pennsylvania.

5. On September 26, 1967, Dante Martire was the duly elected business manager of Local Union 1058, and also delegate and member of the Board of Trustees of Laborers' District Council of Western Pennsylvania.

6. On September 26, 1967, Martire was fined the sum of $500.00, and was ordered removed and suspended from office as business manager of Local 1058 and as delegate and board member of Laborers' District Council of Western Pennsylvania, for a term of five years, for "negligence and incompetence" in connection with the enforcement of certain terms of an agreement between the Union and the Construction Association of Western Pennsylvania.

7. The above disciplinary action was the result of proceedings initiated by the Laborers' District Council in accordance with the terms of the Constitution and By-Laws of said District Council, and no procedural objections have been made.

8. The grounds for disciplinary action processed by the District Council are supported by substantial evidence.

9. The plaintiff, Dante Martire, has complied with all legal requirements concerning the exhaustion of internal union remedies, including an unsuccessful appeal to the Laborers' International Union, without success.

10. Local Union 1058 did not vote or conduct any proceedings concerning the charges made against Martire by the District Council.

11. Martire was removed from office by the officers of Local Union 1058, solely upon the order of the District Council above referred to.

12. The Laborers' International Union of North America, the District Council, and Local Union 1058, are affiliated, but governed by separate Constitutions and By-Laws.

13. The District Council is delegated the power to negotiate agreements with employers in behalf of all Local Unions, including Local 1058, and "to exercise disciplinary power over all infractions or noncompliance" concerning such agreements. Unless this power implies such a right, the District Council is not delegated the right to discipline officers and members of a Local Union.

CONCLUSIONS OF LAW

1. This Court has jurisdiction over the parties and subject matter under the provisions of 29 U. S. C. A. 412.

2. The International Union, having acted in an appellate capacity only, is not an indispensable party to this action.

3. The delegation by Local 1058 to the District Council of the right to exercise disciplinary power in connection with the enforcement of agreements does not impart the right to remove an officer of such Local Union. "Any provision of the constituton and by-laws of any labor organization, which is inconsistent with the provisions of this section [29 U. S. C. A. 411, Section (5)] shall be of no force and effect." 29 U. S. C. A. Section (5) (b). The

method of assuring the performance of collective bargaining agreements by a subordinate organization is available to the superior organization through Title III of the Labor-Management Reporting and Disclosure Act, 29 U. S. C. A. 462.

4. The removal of a member from an office to which he was duly elected by the members of his Local Union constitutes the discipline of a member within the meaning of 29 U. S. C. A. Section (5) (a) which reads as follows:

> "(5) Safeguards against improper disciplinary action.
>
> No member of any labor organization may be fined, suspended, expelled, or otherwise disciplined except for nonpayment of dues by such organization or by any officer thereof unless such member has been (A) served with written specific charges; (B) given a reasonable time to prepare his defense; (C) afforded a full and fair hearing."

Grand Lodge of the International Association of Machinists, etc., et al. v. John J. King, Earl N. Anderson, et al., 335 F. 2d 340 (1964).

5. The removal of Martire as business manager of Local Union 1058 by the officers thereof, without prior proceedings by the Local or a vote of the members, was in violation of 29 U. S. C. A. 411, Section (5) *supra*.

6. Dante Martire is entitled to reinstatement as business manager of Local Union 1058, and to all the compensation, rights and benefits incident to said office from September 26, 1967.

7. In all other respects, plaintiff's complaint should be denied.

/s/ HERBERT P. SORG, *D. J.*

Dated: March 25, 1968.

ORDER

AND Now, this 25th day of March, 1968, it is hereby ordered, adjudged and decreed that defendant Local Union 1058 of the Laborers' International Union of North America and its officers:

1. Restore plaintiff as business manager of Local Union 1058;

2. Reimburse plaintiff for all wages or income, pension, welfare, insurance and other fringe benefits pertinent to his office as business manager of Local Union 1058 from and after September 26, 1967.

It is further ordered that the complaint be dismissed as to Laborers' District Council of Western Pennsylvania, and that all relief sought against Local Union 1058 other than that above set forth, be and the same is hereby denied.

/s/ HERBERT P. SORG, *D. J.*

cc: J. M. Maurizi, Esquire,
3113 Grant Bldg., Pittsburgh, Pa. 15219.

Leo I. Shapiro & Morton B. DeBroff, Esquires,
1201 Law & Finance Bldg., Pittsburgh, Pa. 15219.

Statutes Involved

Labor-Management Reporting and Disclosure Act of 1959; Section 101 (a) (5), 73 Stat. 523; Section 609, 73 Stat. 541; Section 401 (h), 73 Stat. 533; Section 301, 73 Stat. 530.

SECTION 101, 29 U. S. C. A. § 411 (a) (5)

Bill of rights; constitution and bylaws of labor organizations—Safeguards against improper disciplinary action.

No member of any labor organization may be fined, suspended, expelled, or otherwise disciplined except for nonpayment of dues by such organization or by any officer thereof unless such member has been (A) served with written specific charges; (B) given a reasonable time to prepare his defense; (C) afforded a full and fair hearing.

(b) Any provision of the constitution and bylaws of any labor organization which is consistent with the provisions of this section shall be of no force or effect.

SECTION 609, 29 U. S. C. A. §529

Prohibition on certain discipline by labor organization.

It shall be unlawful for any labor organization, or any officer, agent, shop steward, or other representative of a labor organization, or any employee thereof, to fine, suspend, expel, or otherwise discipline any of its members for exercising any right to which he is entitled under the provisions of this chapter. The provisions of section 412 of this title shall be applicable in the enforcement of this section.

SECTION 401, 29 U. S. C. A. § 481 (h)

Terms of office and election procedures—Officers of national or international labor organizations; manner of election—Removal of officers guilty of serious misconduct.

If the Secretary, upon application of any member of a local labor organization, finds after hearing in accordance with the Administrative Procedure Act that the constitution and bylaws of such labor organization do not provide an adequate procedure for the removal of an elected officer guilty of serious misconduct, such officer may be removed, for cause shown and after notice and hearing, by the members in good standing voting in a secret ballot conducted by the officers of such labor organization in accordance with its constitution and bylaws insofar as they are not inconsistent with the provisions of this subchapter.

SECTION 301, 29 U. S. C. A. § 461

Reports—Filing and contents; annual financial report

(a) Every labor organization which has or assumes trusteeship over any subordinate labor organization shall file with the Secretary within thirty days after September 14, 1959 or the imposition of any trusteeship, and semiannually thereafter, a report, signed by its president and treasurer or corresponding principal officers, as well as by the trustees of such subordinate labor organization, containing the following information: (1) the name and address of the subordinate organization; (2) the date of establishing the trusteeship; (3) a detailed statement of the reason or reasons for establishing or continuing the trusteeship; and (4) the nature and extent or participation by the membership of the subordinate organization in the selection of delegates to represent such organizaton

in regular or special conventions or other policy-determining bodies and in the election of officers of the labor organization which has assumed trusteeship over such subordinate organization. The initial report shall also include a full and complete account of the financial condition of such subordinate organization as of the time trusteeship was assumed over it. During the continuance of a trusteeship the labor organization which has assumed trusteeship over a subordinate labor organization shall file on behalf of the subordinate labor organization the annual financial report required by section 431 (b) of this title signed by the president and treasurer or corresponding principal officers of the labor organization which has assumed such trusteeship and the trustees of the subordinate labor organization.

Applicability of other laws.

(b) The provisions of sections 431 (c), 435, 436, 438, and 440 of this title shall be applicable to reports filed under this subchapter.

Penalty for violations.

(c) Any person who willfully violates this section shall be fined not more than $10,000 or imprisoned for not more than one year, or both.

False statements and entries; failure to disclose material facts; withholding, concealing or destroying documents, books, records, reports, or statements; penalty.

(d) Any person who makes a false statement or representation of a material fact, knowing it to be false, or who knowingly fails to disclose a material fact, in any report required under the provisions of this section or willfully makes any false entry in or willfully withholds, conceals,

or destroys any documents, books, records, reports, or statements upon which such report is based, shall be fined not more than $10,000 or imprisoned for not more than one year, or both.

Personal liability.

(e) Each individual required to sign a report under this section shall be personally responsible for the filing of such report and for any statement contained therein which he knows to be false.

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and

LABORERS' DISTRICT COUNCIL OF WESTERN PENNSYLVANIA.

SUPPLEMENT TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT AND APPENDIX

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DANTE MARTIRE,

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LABORERS' LOCAL UNION 1058, a labor organization, THOMAS J. PECORA, President and Business Manager and LOUIS ELISE, Secretary-Treasurer, as officers of Local Union 1058,

and

LABORERS' DISTRICT COUNCIL OF WESTERN PENNSYLVANIA,

Appellants.

No. 17208.

UNITED STATES COURT OF APPEALS

THIRD CIRCUIT

Argued Dec. 3, 1968.

Decided April 17, 1969.

Action by suspended business manager of local union against local union, two of its officers, and district council. The United States District Court for the Western District of Pennsylvania, Herbert P. Sorg, J., entered judgment in favor of plaintiff, and appeal was taken. The Court of Appeals, Kalodner, Circuit Judge, held that section of Labor-Management Reporting and Disclosure Act providing safeguards against improper disciplinary action was not violated by fact that charges against business manager of local union were tried before a trial board of district council rather than before a body of local union.

Reversed and remanded with directions.

1. LABOR RELATIONS 124

Member of local union was not afforded a remedy under section of Labor-Management Reporting and Disclosure Act providing safeguards against improper disciplinary action by reason of his removal from office as union's business agent. Labor-Management Reporting and Disclosure Act of 1959, §§ 101 (a) (5), 609, 20 U.S.C.A. §§ 411 (a) (5), 529.

2. LABOR RELATIONS 124

That part of penalty imposed on business manager of local union by district counsel which barred him from holding office in union for five years affected his status qua union member, and that circumstances afforded him a remedy under section of Labor-Management Reporting and Disclosure Act providing safeguards against improper disciplinary action. Labor-Management Reporting and Disclosure Act of 1959, §§ 101(a) (5), 609, 29 U.S.C.A. §§ 411(a (5), 529.

3. LABOR RELATIONS 124

Expulsion from a union affects membership rights protected by section of Labor-Management Reporting and Disclosure Act providing safeguards against improper disciplinary action. Labor-Management Reporting and Disclosure Act of 1959, §§ 101(a) (5), 609, 29 U.S.C.A. §§ 411 (a) (5), 529.

4. LABOR RELATIONS 124

Action of district council in removing local union's business manager from office for negligence and incompetence did not violate manager's rights under statute

guaranteeing that members of local union will have opportunity to remove local union officers guilty of serious misconduct and under statute regulating imposition of trusteeships by a parent union. Labor-Management Reporting and Disclosure Act of 1959, §§ 101(a) (5), 102, 401(h), 29 U.S.C.A. §§ 411(a) (5), 412, 481(h).

5. Labor Relations 90

Violation of a union or district council's constitution is not actionable per se under the Labor-Management Reporting and Disclosure Act. Labor-Management Reporting and Disclosure Act of 1959, § 1 *et seq.*, 29 U.S.C.A. § 401 *et seq.*

6. Labor Relations 124

Section of Labor-Management Reporting and Disclosure Act providing safeguards against improper disciplinary action does not give the federal courts a general supervisory power over union disciplinary proceedings. Labor-Management Reporting and Disclosure Act of 1959 § 101 (a) (5), 29 U.S.C.A. § 411(a) (5).

7. Labor Relations 124

Fact that a local union member is disciplined by a parent body within the union does not constitute *per se* a denial of a fair hearing, under section of Labor-Management Reporting and Disclosure Act providing safeguards against improper disciplinary action. Labor-Management Reporting and Disclosure Act of 1959, § 101(a) (5), 29 U. S. C. A. § 411(a) (5).

8. Labor Relations 124

Section of Labor-Management Reporting and Disclosure Act providing safeguards against improper disciplinary

action was not violated by fact that charges against business manager of local union were tried before a trial board of district council rather than before a body of local union. Labor-Management Reporting and Disclosure Act of 1959, § 101(a) (5), 29 U. S. C. A. § 411(a) (5).

9. Labor Relations 124

Provisions in union constitution gave a more than adequate warning that business manager of a local could be disciplined for negligence and incompetence in performance of his duties and that such duties included responsibility for seeing that employers pay required union wage to members of union.

William T. Coleman, Jr., Dilworth, Paxson, Kalish, Kohn & Levy, Philadelphia, Pa. (Edward F. Mannino, Philadelphia, Pa., Leo I. Shapiro, Morton B. DeBroff, Pittsburgh, Pa., on the brief), for appellants.

J. M. Maurizi, Suto, Power, Balzarini & Walsh, Pittsburgh, Pa., for appellee.

Before HASTIE, Chief Judge and KALODNER and VAN DUSEN, Circuit Judges.

Opinion of the Court

KALODNER, Circuit Judge.

Three critical questions are presented by this appeal:

(1) Does the Labor-Management Reporting and Disclosure Act of 1959 "LMRDA"[1] afford a remedy to an officer of a local union who has been (1) suspended from his elected office prior to the expiration of his term; (2) barred from holding office in the union for five years; and (3) subjected to a fine of $500.00?

[1] 73 Stat. 519, 29 U. S. C. A. § 401 *et seq.*

(2) Does a District Council, with which a local union is affiliated, have the authority to take the actions above described?

(3) Were the procedural safeguard requirements of the LMRDA complied with in the District Council's proceedings against the plaintiff union officer?

The District Court answered the first question in the affirmative; the second in the negative and did not reach the third.[2]

On this appeal we agree with the District Court's affirmative answer to the first question for the narrow reason, later stated; disagree with its negative answer to the second, and hold as to the third question that it must be answered in the affirmative.

Relevant to our disposition is this statement of the background facts:

The plaintiff-appellee was a member in good standing and business manager of the defendant-appellant Laborers' Local Union 1058, and an elected delegate to the Laborers' District Council of Western Pennsylvania, with which the Union was affiliated.

On September 13, 1967, three delegates to the District Council filed charges against Martire alleging that he was guilty of "negligence and incompetence" in discharging his duties as business manager of the Local Union. The charge arose from the fact that members of the Local Union had been employed for some eighteen months on a project at a wage less than that fixed by the collective bargaining agreement.

The Charge was filed pursuant to the procedure prescribed by Article VIII, Section 1, of the District Council's

[2] The Opinion of the District Court is presently unreported.

Constitution which permits "an officer or delegate in good standing" to file charges against "any other officer or delegate of a District Council. * * *"

On September 14, 1967, Martire received written notice of the charge against him in compliance with the District Council Constitution and was informed that the District Council Trial Board would hold a hearing on the charge on September 26, 1967. Martire appeared at the hearing and testimony was taken, the proceeding concededly being in accord with the District Council Constitution.

On September 27, 1967, Martire was notified that the Trial Board had found him guilty as charged and had suspended him from his positions as business manager of the Local and delegate to the District Council for five years, forbidden him to hold any other position during the period of his suspension, and fined him $500. The action of the Trial Board was ratified by the District Council and, after a hearing, by the General Executive Board of the International Union.

Instead of appealing to the next convention of the International, as required by the Local, District Council, and International Constitutions, Martire filed a Complaint in the United States District Court for the Western District of Pennsylvania on February 28, 1968, against the Local Union, two of its officers, and the District Council, asserting jurisdiction under the LMRDA.

In his Complaint Martire alleged that (1) the District Council had no authority under the Local and District Council Constitutions to "fine, suspend, expel or otherwise discipline [him] as a member or as an elected representative of his local Union"; (2) the District Council had no authority under the District Council Constitution and by-laws to discipline him for "negligence and incompetence"

since this is not a charge specified therein; (3) there was insufficient evidence to support the findings and punishment; (4) the procedural requirements of the District Council Constitution were not complied with; and (5) he was not charged and tried by a body of the Local Union.

The Complaint further alleged that these actions violated the provisions of the LMRDA and asked for compensatory and punitive damages and equitable relief, including reinstatement to his office with back pay and a permanent injunction against certain officers of the Local to prevent their alleged interference with his membership rights in the Local.

After a non-jury trial, the District Court found that there was substantial evidence to support the Trial Board's finding that Martire was guilty of negligence and incompetence.[3] However, even though it in no way found that Martire had been denied a fair hearing, it ordered Martire reinstated with back pay and other benefits since it concluded that the removal of a Local Union officer by a District Council violated Section 101(a) (5) of the LMRDA, and that any provision in the Union constitutions permitting such action was void under Section 101(b).

On this appeal Martire does not contend that he was in any way denied a fair hearing or that the evidence presented before the Trial Board did not support its action. He contends, however, that the District Council had no authority to do anything except remove him from his position as delegate to the District Council and that the entire action of the District Council is invalid since nowhere in the District Council Constitution is it expressly stated that an officer of a Local Union can be disciplined for negli-

[3] Para. 8 of the District Court's "Findings of Fact" states: "The grounds for disciplinary action processed by the District Council are supported by substantial evidence.

gence and incompetence. Martire's contention appears to be twofold: (1) the action of the District Council violated the Union constitutions and such a violation is actionable under the LMRDA; and (2) the action of the District Council violated the guarantees of the LMRDA quite apart from whether the action also violated the Union constitutions.

What has been said brings us to the first of the three questions presented on this appeal, namely:

> "Does the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA) afford a remedy to an officer of a local union who has been (1) suspended from his elected office prior to the expiration of his term; (2) barred from holding office in the union for five years; and (3) subjected to a fine of $500?"

[1] In Sheridan v. United Brotherhood of Carpenters, 306 F. 2d 152 (1962) we held that neither Title I of the LMRDA nor Section 609[4] affords a remedy to a business agent of a union who has been removed from his elected office prior to the expiration of his term, for the reason that "It is the union-member relationship, not the union-officer or union-employee relationship, that is protected."[5] We adhere to that ruling, and accordingly hold that Martire is not afforded a remedy under Section 101(a) (5) of

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[4] Section 609, 73 Stat. 541, 29 U. S. C. A. § 529, provides:

> "It shall be unlawful for any labor organization, or any officer, agent, shop steward, or other representative of a labor organization, * * * to fine, suspend, expel, or otherwise discipline any of its members for exercising any right to which he is entitled under the provisions of this Act. The provisions of section 102 shall be applicable in the enforcement of this section."

Below, Martire contended that the action of the District Council violated Section 609. Section 609, however, is clearly inapplicable to the instant case since Martire's "discipline" in no way resulted from the exercise by him of any right guaranteed by the Act.

[5] See also, *e.g.*, Air Line Stewards and Stewardesses Association, Local 550 v. Transport Workers Union of America, 334 F. 2d 805, 808, 809 (7th Cir. 1964), cert. den. 379 U. S. 972, 85 S. Ct. 648, 13 L. Ed. 2d 563 (1965).

the LMRDA[6] by reason of his removal from office as the Union's business agent.

[2] We hold, however, that that part of the penalty imposed on Martire by the District Council which bars him from holding office in the Union for five years affects his status *qua* union member, and that circumstance affords him a remedy under Section 101(a) (5).

[3] With reference to the $500 fine, it need only now be said that it does not appear from the record, via the Constitutions of the Local Union or District Council, whether Martire is subject to expulsion from the Local Union if he does not pay his fine; if he could be so expelled, then he would be afforded the protection of the LMRDA, since as we held in Lewis v. American Federation of State, County and Municipal Employees, AFL-CIO, 407 F. 2d 1185 (decided February 24, 1969), expulsion from a union affects membership rights protected by Section 101(a) (5).

In accordance with what has been said, we hold that the District Court did not err in ruling that Martire is afforded a remedy under Section 101(a) (5) and 102 of the LMRDA.[7] We do so on the narrow ground, not assigned by the District Court, that Martire's being barred from holding office in Local Union for a term of five years affects his rights *qua* union member; otherwise stated, his union-member relationship.

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[6] Section 101(a) (5) of the Act, 73 Stat. 523, 29 U. S. C. A. § 411(a) (5) provides:

> "Safeguards against improper disciplinary action—No member of any labor organization may be fined, suspended, expelled, or otherwise disciplined except for nonpayment of dues by such organization or by any officer thereof unless such member has been (A) served with written specific charges; (B) given a reasonable time to prepare his defense; (C) afforded a full and fair hearing."

[7] Title 1, § 102, 73 Stat. 523, 29 U. S. C. A. § 412 provides:

> "Any person whose rights secured by the provisions of this title have been infringed by any violation of this title may bring a civil action in a district court of the United States for such relief (including injunctions) as may be appropriate. * * *"

[4] Martire further contends that the actions of the District Council violated his rights under Section 401(h) and Title III of the Act. Neither is applicable here.

Section 401(h), 29 U. S. C. A. § 481(h), guarantees only that the members of a local union will have an opportunity to remove local union officers guilty of serious misconduct; it cannot be read to provide that only the local union may act to remove such officers.[8]

Title III regulates the imposition of trusteeships by a parent union. Martire contends that it impliedly forbids "interference" in the administration of a local union's business such as the removal of one of its officers, unless a trusteeship is imposed. The contention is inapposite in the instant situation where the record discloses no more than that a union's business manager was removed from office for proven "negligence and incompetence," in accordance with the provisions of the District Council and Local Union Constitutions. Standing alone such action is not within the periphery of Title III.

[5] It may be added that Martire also contends that the LMRDA affords a remedy under Section 102 for violations of the Union or District Council Constitutions, and that his removal by the District Council from his Local Union office violated the Constitutions of both. With re-

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[8] Section 401(h) 73 Stat. 533, provides:

> "If the Secretary [of Labor], upon application of any member of a local labor organization, finds after hearing in accordance with the Administrative Procedure Act that the constitution and bylaws of such labor organization do not provide an adequate procedure for the removal of an elected officer guilty of serious misconduct, such officer may be removed, for cause shown and after notice and hearing, by the members in good standing voting in a secret ballot conducted by the officers of such labor organization in accordance with its constitution and bylaws insofar as they are not inconsistent with the provisions of this title."

We also note that this subsection by its terms, as does § 402, 73 Stat. 534, 29 U. S. C. A. § 482, dealing with enforcement of § 401, directs aggrieved union members to seek relief from the Secretary of Labor rather than by a civil action under the LMRDA. See Calhoon v. Harvey, 379 U. S. 134, 85 S. Ct. 292, 13 L. Ed. 2d 190 (1964).

spect to that contention, we hold that violation of a union or district council's constitution is not actionable *per se* under the LMRDA.

It is settled that "it is only when * * * a claim is made that the constitution is being applied in such a way as to deprive the local members of their secured rights that the documents [constitutions] may be considered."[9]

Since we hold that Martire has asserted a right under Section 101(a) (5), we reach the second question posed at the outset of this Opinion, namely, "Does a District Council, with which a local union is affiliated, have the authority to take the actions above described?"

[6] Section 101(a) (5) does not give the federal courts a general supervisory power over union disciplinary proceedings; the section merely provides that such disciplinary proceedings must accord the accused three specified procedural safeguards:

[7,8] He must be "(A) served with written specific charges; (B) given a reasonable time to prepare his defense; (C) afforded a full and fair hearing." The only one of these that could possibly give a local union member the right to be tried only by his local union is the last. But we can find no basis, either in the Act itself, or in the legislative history, for concluding that Congress intended to include this right in the requirement for a "full and fair hearing." We, therefore, conclude that the fact that a local union member is disciplined by a parent body within the union does not constitute *per se* a denial of a fair hear-

[9] Navarro v. Gannon, 385 F. 2d 512, 516 n. 6 & 520 (2 Cir. 1967), cert. den. 390 U. S. 989, 88 S. Ct. 1184, 19 L. Ed. 2d 1294 (1968). See also Yanity v. Benware, 376 F. 2d 197 (2 Cir. 1967), cert. den. 389 U. S. 874, 88 S. Ct. 167, 19 L. Ed. 2d 158; Hughes v. Local No. 11, Int'l Ass'n of Ironworkers, 287 F. 2d 810, 818 (3 Cir. 1961), cert. den. 368 U. S. 829, 82 S. Ct. 51, 7 L. Ed. 2d 32; Comment, 43 N. Y. U. L. Rev. 393, 398-400 (1968).

ing.[10]. Nor do we find any special circumstances here warranting a finding that under the particular facts such a fair hearing was denied, as might possibly be the case, for example, if the charges involved an issue with respect to which there was a conflict of interest between the local and the parent body. The record in no way indicates that the proceeding was conducted in any manner which was the least unfair or prejudicial to Martire, or that the Trial Board was biased against him. We therefore conclude that Section 101(a) (5) was in no way violated by the fact that the charges against Martire were tried before a trial board of the District Council rather than before a body of the Local Union.

Finally, as to the third question presented: "Were the procedural safeguard requirements of the LMRDA complied with in the District Council's proceedings against the plaintiff union officer?"

It must immediately be noted on this score that, as we earlier stated, (1) Martire does not contend that he was in any way denied a fair hearing or that the evidence presented before the District Council's Trial Board did not support its action, and (2) the District Court made the fact finding that "The grounds for disciplinary action processed by the District Council are supported by substantial evidence."

The hard core of Martire's contention is that neither the District Council nor Local Union Constitution specifically makes "negligence and incompetence" an offense, and that accordingly he could not be charged with, nor convicted of such an offense.

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[10] But *cf.* Vars v. International Brotherhood of Boilermakers, 320 F. 2d 576 (2 Cir. 1963) in which the Court indicates that the fact that the trial examiner is an officer of the International Union rather than "an independent figure divorced from union controversies" is a factor to be considered in reviewing a union disciplinary proceeding.

There is no merit to this contention. Martire was sufficiently apprised by the Union Constitutions that he was subject to discipline for negligence and incompetence in carrying out his duties as an officer of the Local Union.

The Local Union Constitution provides that "[i]t shall be the duty of the Business Manager of a Local Union to see to it that the affairs and business of the Local Union are being properly conducted in accordance with the Constitutions [of the Local Union, District Council, and International Union] and with the rules, regulations, policies, practices and lawful orders and decisions [of these bodies]." Art. IV, § 3E(1). It further provides that "[i]t shall be the duty of the Business Manager to see to it that the provisions of all agreements are enforced and respected by all persons affected thereby." Art. IV, § 3E(2)(b). The Business Manager is required to "keep himself informed of all contemplated work to be done within the jurisdiction of the Local Union and make such pre-job arrangements as may be necessary in order to insure the proper and lawful progress of such work once started and to its conclusion." Local Union Constitution, Art. IV, § 3E(5). It is his duty to "visit all projects within the jurisdiction of the Local Union in order to ascertain whether or not work is progressing in accordance with established conditions." Local Union Constitution, Art. IV, § 3E(6).

In providing the qualifications for local union office, the Local Union Constitution provides that candidates must "be literate and otherwise competent to perform the duties of the office." Art. V, § 3. Furthermore, "[w]hen a member has been elected to office * * *, he shall, as such officer * * *, fully perform all such duties, responsibilities and obligations that attach to such office * * * as required by the International Union, Local Union or District Council Constitutions. * * *" Local Union Constitution, Art.

VI, § 3(m). "In the event of non-compliance by anyone holding an elective office or position, he shall be subject to all applicable disciplinary provisions contained in either the International Union, Local Union or District Council Constitutions. * * *" Local Union Constitution, Art. VI, § 3(n).

Finally, in the oath prescribed by Article XIII of the Local Union Constitution for all elective positions, a solemn pledge is made to comply with all the provisions of the three union constitutions and "to perform the duties of my office as prescribed in said Constitutions."

[9] The foregoing provisions give a more than adequate warning that the business manager of a local union may be disciplined for negligence and incompetence in the performance of his duties, and that such duties include responsibility for seeing that employers pay the required union wage to members of the union.

Moreover, Art. VIII, § 7 of the District Council Constitution and Art. XII, § 7 of the Local Union Constitution both provide "that where any officer has been found guilty and suspended from office because of negligence, incompetence or dishonesty in the performance of his duty, he shall remain suspended * * * pending the decision of * * * his appeal."

In accordance with what has been said, the Order of the District Court will be reversed insofar as it grants relief to the plaintiff, and the cause will be remanded with directions to the District Court to proceed in accordance with this Opinion.



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IN THE

Supreme Court of the United States

October Term, 1969.

No. 454.

DANTE MARTIRE,

Petitioner,

v.

LABORERS' LOCAL UNION 1058, a labor organization, THOMAS J. PECORA, President and Business Manager and LOUIS ELISE, Secretary-Treasurer, as officers of Local Union 1058,

and

LABORERS' DISTRICT COUNCIL OF WESTERN PENNSYLVANIA,

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1969.

No. 454.

DANTE MARTIRE,

Petitioner,

v.

LABORERS' LOCAL UNION 1058, A LABOR ORGANIZATION, THOMAS J. PECORA, PRESIDENT AND BUSINESS MANAGER AND LOUIS ELISE, SECRETARY-TREASURER, AS OFFICERS OF LOCAL UNION 1058,

AND

LABORERS' DISTRICT COUNCIL OF WESTERN PENNSYLVANIA,

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT.

COUNTERSTATEMENT OF QUESTION PRESENTED FOR REVIEW.

Was a union member who held office at both the Local and District Council levels of his union deprived of any right protected by the Labor-Management Reporting and

Disclosure Act when he was removed from both offices by order of the District Council for negligence and incompetence in failing to require payment of the wage rates negotiated by the District Council, where the District Council concededly followed all the trial procedures set forth in its Constitution, the charges admittedly were supported by substantial evidence, and the removal was preceded by trial proceedings in which the union member was served with written specific charges, given a reasonable time to prepare his defense, and afforded a full and fair hearing?

COUNTERSTATEMENT OF THE CASE.

The narrow factual question presented by this case is whether a labor union member who was an officer at both the Local and District Council levels was deprived of any federally-protected right when he was removed from both offices by order of the District Council for negligence and incompetence in failing to require payment of the wage rates negotiated by the District Council. Since Petitioner has failed completely to set forth the facts relating to the action taken against him by the District Council,[1] a recitation of those facts, which is crucial for an understanding of the issues herein presented, follows.

At all times relevant to these proceedings, Petitioner Dante Martire was both a member and Business Manager of Construction, General Laborers and Material Handlers' Local Union 1058 ("local union"), and also an elected delegate and officer of the regional District Council of the Union for Western Pennsylvania (21-22a, 164a).[2] The District Council is an intermediate union body standing midway between the local union and the International and is designed to function as the "central representative body" of its affiliated local unions (Article II, § 1, District Council Constitution).[3] The District Council for Western Pennsylvania serves in this capacity for fifteen affiliated local unions in thirty-three counties in Pennsylvania (28-29a). One of its specific objects is "To promote respect for, compliance with and observance of all of the provisions of

1. For this reason alone, the Writ should be denied, pursuant to Rules 23(1)(e) and 23(4) of the Rules of this Court.

2. All numerical references followed by "a" refer to the page numbers in the one-volume Appendix in the Court of Appeals, a certified copy of which was filed with this Court by Petitioner.

3. All references to the Local and District Council Constitutions herein refer to Joint Exhibit 1, attached to Appendix in the Court of Appeals.

agreements by it and its affiliated Local Unions and the members thereof" (Article II, § 1(h), District Council Constitution). It is also empowered to "enter into . . . agreements with employers, for and on behalf of its affiliated Local Unions and to enforce and police the observance thereof by employees and employers, Local Unions and their members. . . . ," and to "exercise disciplinary power over all infractions or non-compliance with [such] agreements. . . ." (Article II, §§ 2(a), (e), District Council Constitution).

The charges which gave rise to the proceedings against Martire in the District Council stemmed from his activities in the capacity of Business Manager and delegate on the Allegheny Center Urban Renewal Project, a project which fell within the jurisdiction of both the local union and the District Council. On December 23, 1965, the District Council entered into, pursuant to the powers enumerated above, an agreement with the Constructors' Association of Western Pennsylvania which called for wage increases of 25 to 25½ cents per hour on all work projects within the jurisdiction of the District Council's affiliated local unions (88-89a, 149a). Martire was a member of the District Council negotiating committee on this agreement (88a, 149a). All members of the Constructors' Association were notified of these wage increases on or before December 23, 1965 (149a). The Allegheny Center Project was bid thereafter on January 21, 1966, and J-Jac Construction Company ("J-Jac"), a member of the Constructors' Association, signed a contract for work on the Project on March 7, 1966 (90a, 150a). Work began on March 14, 1966, and members of Laborers' Local Union 1058 were employed on the Project continuously from that date (91a, 150a).

Instead of paying the applicable 1966 rate of $3.71 per hour as required by the agreement of December 23, 1965, J-Jac posted and paid a wage rate of only $3.45½ cents,

which had been the applicable 1965 rate (150a). Martire and his son Dennis, an assistant Business Manager of the local union, visited the Project site on several dates and saw or should have seen this rate posted (150a). Thereafter, Martire and his son were specifically informed on several occasions that less than the contract rate was being paid by J-Jac. Thus, the union steward on the Project notified Dante Martire of the wage rate being paid in May of 1966, but neither of the Martires responded to his charges (151a). In addition, on June 7, 1967, a union member had a statement read to the local union membership alleging a failure by J-Jac to pay the contract rate on the Project, and charging the Martires with complicity in this practice (64-65a, 100a, 151a). The Martires were both informed of this statement (100a, 151a). On June 20, 1967, moreover, Dante Martire was specifically directed by the President of the District Council to investigate these charges (101a, 151a).

Despite these several notices to the Martires, it was not until after the appointment of an investigating committee by the District Council on July 12, 1967, that J-Jac agreed to pay the required rate of $3.71 per hour. J-Jac finally repaid the local union members nearly $10,000 in September of 1967, the sum representing the total underpayment for the eighteen month period of work on the Project (111a, 152a).

Because the Martires had permitted J-Jac to avoid paying the proper wage rate on the Project for an eighteen month period, charges of incompetence and negligence were filed against them with the Secretary-Treasurer of the District Council on September 13, 1967 (80-81a, 145-46a). This action was taken under the provisions of Article XII, § 9 of the Local Union Constitution, which directs that "In

jurisdictions where a District Council exists, all charges for violations of matters falling within the jurisdiction of the District Council, such as violations of agreements, working rules, etc., shall be filed with the Secretary-Treasurer of the District Council," and under Article II, § 2(e) of the District Council Constitution, which authorizes the District Council "To exercise disciplinary power over all infractions or noncompliance with agreements . . . , after proper notice and hearing as hereinafter provided." (32a, 146a).

The Martires received written notice of the specific charges of negligence and incompetence under Article II, § 2(e) on the next day, and were informed that a trial board hearing before the District Council had been set for September 26, 1967 (74-75a, 162-63a). On this latter date, the Martires appeared before the trial board of the District Council for a period of five to six hours, and testimony relating to the J-Jac wage payments was given by the Martires, the union steward on the Project, the President of J-Jac, and several union officials and members (37-38a, 82-83a, 148a). The ruling of the District Council removing Petitioner from his local and District Council offices, fining him five hundred dollars, and barring him from holding union office for five years was announced on September 27.[4] All of the procedures followed by the District Council have been stipulated to have been in accord with the District Council Constitution (75-80a, 84-86a, 128a, 164a), and the

4. Dennis Martire, who was not a party to the present case, was also ordered suspended from office and fined by the District Council (153-54a). This ruling was reversed on appeal, however, by the General Executive Board of the International Union, which upheld the District Council's ruling as to Petitioner, but ruled that Dennis Martire had reported the wage problem to Petitioner, and that Petitioner was responsible for permitting the 1965 wage rate to remain in effect (87a, 155-59a).

District Council proceedings have in no way been challenged as unfair. (Supplement to Petition pp. 7, 12 (Opinion of the Court of Appeals).) Petitioner's sole objection to the proceedings in the District Council is that they resulted not only in his removal from District Council office, which is unchallenged, but also in his removal from local union office without separate proceedings before the local union (Petition, pp. 2-3, 5).[5]

5. Significantly, Article XII of the Local Union Constitution and Article VIII of the District Council Constitution establish precisely the same procedure for "Charges, Trials and Appeals." The sole difference is in the name of the respective trial bodies.

ARGUMENT.

The Court of Appeals for the Third Circuit correctly decided this case, and there is no conflict of decisions, nor is there any important question of federal law meriting review by this Court presented on the instant record.

1. The single question decided by the Court of Appeals was the extremely narrow one of whether Petitioner was deprived of any right protected by the Labor-Management Reporting and Disclosure Act of 1959 ("LMRDA") (73 Stat. 519, 29 U. S. C. § 401 et seq.) simply because he was removed from local union office for negligence and incompetence by the District Council of his union, rather than by the local union itself. The limited scope of the decision of the Court of Appeals is graphically demonstrated both by that Court's opinion,[6] and by Petitioner's repeated statements on the record as to what question was before the courts below. Thus, Petitioner consistently admitted that the District Council followed all of the trial procedures specified in its Constitution in the proceedings against him (75-80a, 84-86a, 128a, 164a). Petitioner also conceded that the District Council proceedings were in no way unfair, biased, or conducted in such a manner as to deprive him of a full and fair hearing (Supplement to Petition, pp. 7, 12). Finally, Petitioner did not contest the specific finding of the District Court that the charges of negligence and incompetence against him in the District Council were supported by substantial evidence (Petition, Appendix, p. 10, Finding of Fact No. 8; Supplement to Petition, pp. 7, 12). Thus, Petitioner's claim resolves itself to the bald assertion that

6. Petitioner did not print the Opinion of the Court of Appeals in his Petition. On August 29, 1969, however, Respondent was served with three copies of a "Supplement to Petition for Writ of Certiorari to the United States Court of Appeals for the Third Circuit and Appendix," which reprints the Opinion.

he had an invincible right to be removed from local union office exclusively by the local union, a contention made even more strained by the fact that the procedures established by the District Council and Local Union Constitutions are precisely the same for "Charges, Trials, and Appeals," save for the names of the respective trial bodies.[7]

2. In support of his contention, Petitioner relies primarily[8] upon Section 101(a)(5) of the LMRDA, 29 U. S. C. § 411(a)(5), which provides that:

> "No member of any labor organization may be fined, suspended, expelled, or otherwise disciplined except for nonpayment of dues by such organization or by any officer thereof unless such member has been (A) served with written specific charges; (B) given a reasonable time to prepare his defense; (C) afforded a full and fair hearing."

As the Court of Appeals correctly held: "Section 101(a)(5) does not give the federal courts a general supervisory power over union disciplinary proceedings; the section merely provides that such disciplinary proceedings must accord the accused [the] three specified procedural safeguards" (Supplement to Petition, p. 11).[9] The allegation

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7. Article XII, Local Union Constitution, Article VIII, District Council Constitution, both of which appear in Joint Exhibit I, attached to the certified copy of the Appendix in the Court of Appeals filed with this Court.

8. Petitioner apparently relies also upon Sections 301 and 401(h) of the LMRDA in some undefined manner. The Court of Appeals fully considered those provisions, and its decision that they were inapplicable herein was clearly correct (See Supplement to Petition, p. 10).

9. See also *Cornelio v. Metropolitan District Council*, 243 F. Supp. 126 (E. D. Pa. 1965), *aff'd*, 358 F. 2d 728, 729 (3d Cir. 1966), *cert. denied*, 386 U. S. 975 (1967); *Null v. Carpenters District Council*, 239 F. Supp. 809, 814-15 (S. D. Tex. 1965); *Guarnaccia v. Kenin*, 234 F. Supp. 429, 436-41 (S. D. N. Y. 1964), *aff'd sub nom. Gurton v. Arons*, 339 F. 2d 371 (2d Cir. 1964).

that the "right" to be removed from local union office exclusively by the local union falls within the concept of the "full and fair hearing" mandated by Section 101(a)(5)(C) finds no support in either the legislative history or the case law.[10] As this Court recently held in *NLRB v. Allis-Chalmers Mfg. Co.*, 388 U. S. 175, 193-95, the LMRDA of 1959 was "the first comprehensive regulation by Congress of the conduct of internal union affairs," and the Congress carefully minimized its intrusion into such affairs. Thus, the Senate Report stated as its guiding principles that:

> "The committee recognized the desirability of minimum interference by Government in the internal affairs of any private organization. Trade unions have made a commendable effort to correct internal abuses; hence the committee believes that only essential standards should be imposed by legislation. Moreover, in establishing and enforcing statutory standards great care should be taken not to undermine union self-government or weaken unions in their role as collective-bargaining agents.
>
> ". . . The committee strongly opposes any attempt to prescribe detailed procedures and standards for the conduct of union business. Such paternalistic regulation would weaken rather than strengthen the labor movement; it would cross over into the area of

10. However, the Court of Appeals recognized that the presence of "special circumstances" might deprive a local union officer of a full and fair hearing if he was tried in proceedings before a District Council, where, for example, "the charges involved an issue with respect to which there was a conflict of interest between the local and the parent body." (Supplement to Petition, p. 12.) *Cf. Navarro v. Gannon*, 385 F. 2d 512 (2d Cir. 1967), *cert. denied*, 390 U. S. 989. No such "special circumstances" were alleged herein and neither of the courts below found any trace of bias against Petitioner or the local union in their review of the record.

trade union licensing and destroy union independence."[11]

A ruling that a union member who is guilty of negligence and incompetence and who, as here, is an officer at both the local and District Council levels, can be removed from local office solely by the local union, despite contrary provisions of the District Council Constitution, is precisely the type of intrusion calculated to weaken union-self government that was explicitly rejected by Congress in 1959. Such a course would be particularly objectionable where, as here, the removal from office grows directly out of a failure to require payment of collective-bargaining rates negotiated by the District Council for an area embracing the local union.

3. There is no conflict of decisions on the point presented herein. Petitioner's reliance upon *Salzhandler v. Caputo*,[12] *Grand Lodge v. King*,[13] *Navarro v. Gannon*,[14] and *George v. Bricklayers Union*,[15] is misplaced, since each of those decisions relies not upon Section 101(a)(5), but rather upon Sections 101(a)(1) and (2) and Section 609 of the LMRDA. As the Court recognized in the *King* case, this is a crucial difference:

> "Section 101(a)(5) guarantees to union members . . . that they shall be accorded procedural due process before being subjected to disciplinary action, for whatever reason. Section 609, on the other hand, has no bearing upon the procedures to be followed in dis-

11. S. Rep. No. 187, 86th Cong., 1st Sess., p. 7, reprinted in I Legislative History of the LMRDA of 1959, p. 403, and quoted in part in *NLRB v. Allis-Chalmers Mfg. Co., supra*, at 194.

12. 316 F. 2d 445 (2d Cir. 1963).

13. 335 F. 2d 340 (9th Cir. 1964), *cert. denied*, 379 U. S. 920.

14. 385 F. 2d 512 (2d Cir. 1967), *cert. denied*, 390 U. S. 989.

15. 255 F. Supp. 239 (E. D. Wisc. 1966).

> ciplining union members. . . . [S]ection 609 is not itself a source of additional independent rights, but is an enforcement provision designed . . . to effectuate rights conferred in other sections of the Act by making it unlawful to punish members who seek to exercise such rights. Punishment for the exercise of these rights is prohibited by section 609 whether inflicted summarily or after a full panoply of procedural protections." [16]

Here, as the Court of Appeals recognized (Supplement to Petition, p. 8 and n. 4), Petitioner was not disciplined for exercising any right guaranteed by Sections 101(a)(1) and (2), but was tried rather for negligence and incompetence in administering a collective-bargaining contract, a charge concededly supported by substantial evidence. As such, Sections 101(a)(1) and (2) and 609 have no relevance to this case.

Similarly, Petitioner's reliance upon *Vars v. International Brotherhood* [17] and *Allen v. International Alliance,* [18] is unfounded, as those decisions simply held that union officers were denied the "full and fair hearing" guaranteed by Section 101(a)(5) where one was convicted of charges unsupported by any evidence, and the other was tried for violating a constitutional provision inapplicable to him. Compare *Nelms v. United Association,* 405 F. 2d 715 (5th Cir. 1968). Here, on the other hand, the Court of Appeals found that Petitioner was properly tried under the District Council Constitution, and Petitioner conceded the existence of substantial evidence to support the charges against him. (Supplement to Petition, pp. 7, 12, 13-14.)

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16. *Grand Lodge v. King, supra,* note 12, at 345.
17. 320 F. 2d 576 (2d Cir. 1963).
18. 338 F. 2d 309 (5th Cir. 1964).

Finally, *Sheridan v. United Brotherhood* [19] and *Pittman v. United Brotherhood* [20] involved only the question as to the individuals protected by Sections 101(a)(5) and 609, and the Court of Appeals herein specifically held that Petitioner was entitled to, and received, all the procedural safeguards required by the former provision. (Supplement to Petition, pp. 8-9.) Thus, no conflict of decisions exists on the question presented herein.

CONCLUSION.

For the reasons stated above, it is respectfully submitted that the Petition for Writ of Certiorari should be denied.

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19. 306 F. 2d 152 (3d Cir. 1962).
20. 251 F. Supp. 323 (D. Fla. 1966).